Court No. 2

In the High Court of Uttaranchal at Nainital.

A.O.No. 158 of 2003.

United India Assurance Company Ltd.,
through its Divisional Manager,
Aslay hall, Dehradun, Distt. Dehradun….**.....**Appellant

Versus

1.Smt. Manju W/o Late Om Praksh Badoni,
2.Km. Akansha D/o Late Om Prakash Badoni,
3.Vishwamani Badoni S/o Sri Sureshanand,
4.Smt. Dashrathi Devi W/o Sri Vishwamani,
All Residents of Village Bhatawara
Tehsil Dhansali, Patwari Circle Nalchami,
District Tehri Garhwal, Uttaranchal.
5.Sri Anant Ram Semwal S/o Sri Ram Semwal
Village-Nahera, Post Office Nalchami,
District –Tehri Garhwal.
6.Sri Dinesh Purwan S/o Sri Pooran Mani,
Village-Sain Patti-Doonagamandar,
District Tehri Garhwal.

..... Respondents

For appellant- Sri D.S.Patni Advocate,
For the respondent/claimants-Sri Rajendra Kotiyal Advocate.

Dated: 23rd Aug., 2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Insurance Company against the judgment and order dated 05.05.2003 passed by the Motor Accident Claims Tribunal /District Judge, Tehri Garhwal *(hereinafter referred to as the Tribunal)* in Motor Accident Claim Case No.42 of 2001, whereby the claim petition filed by the claimant/petitioners has been decreed by the Tribunal for compensation of Rs. 7,50,000/- alongwith interest.

2- Brief facts giving rise to this appeal are that on 2.3.2001 Om Prakash Badoni was going to attend a marriage party with Jaidev Mamgain by vehicle Tata India

No. UP 07-9292. At about 7:00 p.m. near Khandogi the said vehicle met with an accident due to rash and negligent driving of the driver of said vehicle resulting the death of aforesaid Om Prakash Badoni and Jaidev Mamgain on the spot. It was stated that the age of the deceased was 32 years at the time of accident. The claimants who are dependents of the deceased filed the claim petition before the Tribunal for compensation under Sec. 166 of the Motor Vehicles Act against the opposite parties which was allowed accordingly.

3- The driver and owner of the offending vehicle in their joint written statement admitted the accident but stated that the said accident took place due to technical failure of the vehicle. The Insurance Company denied all the contents of the claim petition but admitted the accident. It was also stated that the driver of the vehicle was driving the vehicle without a valid driving licence and against the conditions of the policy. The learned Tribunal, on the pleadings of the parties, framed necessary issues and decided them in favour of the claimants.

4- The learned counsel for the appellant pressed this appeal only one ground that the Tribunal has erroneously considered the earning of the deceased Rs. 80,000/- per annum on the basis of presusmption and the amount awarded is highly excessive. We have gone through the impugned judgment. The learned Tribunal while deciding issue Nos. 1 & 2 held that the accident resulting the death of Om Prakash Badoni occurred due to rash and negligent driving of the driver of offending vehicle and it was proved on the basis of documentary evidence that the driver of the said vehicle was holding a valid driving licence on the date of accident. The Tribunal awarded the compensation on the basis of findings given on issue Nos.3

& 4. The deceased was diploma holder. In this regard the claimants have filed pharmacist certificate, registration as pharmacist, High School Certificate and death certificate of deceased etc. before the Tribunal. We find that on the basis of the evidence, the learned Tribunal has rightly held the yearly income of the deceased at Rs. 80,000/- and calculated the loss of dependency on the aforesaid amount. The ground of challenge is rejected. We hold that the appeal is not maintainable on the said ground.

5- Further, the law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. The Apex Court in case of ***National Insurance Company Ltd. Chandigarh versus Nicolletta Rohtagi and others reported in (2007) 7 Supreme Court Cases, Page 456*** has held that, *"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".* However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

6. Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant-Insurance Company has no force.

8. The appeal has no merit and is dismissed. The order impugned in this appeal is affirmed. There shall be no order as to costs. The amount deposited by the

appellant in appeal shall be remitted to the Motor Accident Claims Tribunal concerned within a period of two months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh